IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR

D. B. CIVIL WRIT PETITION NO. 443/1999

M/s. Hindustan Petroleum Corporation Ltd.
V
State of Rajasthan & Ano.

Date of Judgment: 5th April 2007

Hon'ble Mr. Justice R. M. Lodha
Hon'ble Mr. Justice R. S. Chauhan

Mr. A. Kasliwal for the Petitioner,
Mr. B. L. Awasthi, Addl. G. A for the State.

(Per R. S. Chauhan J.):

The petitioner, M/s. Hindustan Petroleum Corporation, has challenged the Assessment Order dated 31-1-1978 (Annexure 5) passed by the Assessing Authority under the Rajasthan Land and Building Tax Act, 1964 (henceforth to be referred to as 'the Act of 1964', for short), the Judgment dated 6-2-1998 (Annexure 10) passed by the Rajasthan Taxation Tribunal (henceforth to be referred to as 'the learned Tribunal', for short), the Judgment dated 18-12-1998 (Annexure 11) also passed by the learned Tribunal, and the Reassessment order

dated 16-9-1998 (Annexure 12) passed by the Assessing Authority.

The brief facts of the case are that the petitioner is a Government of India Undertaking engaged in refining and distributing petroleum products throughout the country. The Corporation was constituted for the purpose of taking over of the Indian operations of multi-national giants, M/s ESSO Limited and M/s Caltex Limited in the years 1974 and 1976 respectively. Consequently, the petitioner also took over the assets and liabilities of the two companies in the country. As such the petitioner became a successor to the aforementioned companies' entire activity in India. It is also Government Company under the Companies Act, 1956 and is incorporated as such.

With the said takeover of the assets of the two aforementioned companies, the petitioner came into possession of two adjoining pieces of land, both situated at 22, Godown at Jaipur. While the first piece of land (henceforth to

be referred to as ‘the land in question’, for short), admeasuring 200’ x 200’, was leased out to the M/s ESSO Company by the then Maharaja Sawai Mansingh of Jaipur, the second piece of land (henceforth to be referred to as ‘the other land’, for short) was sold to the M/s Caltex (India) Ltd. Both the lands are situated adjacent to each other and are being used for the same purpose. While the land in question measures 3716 sq. mts., the other land measures 6642.35 sq. mts.

The Assessing Authority under the Act of 1964 assessed the both the parcels of land by two different Assessing orders. The land in question was assessed vide order dated 31-1-1978 (Annexure 5), the other land was assessed vide order dated 28-12-1978 (Annexure 13). However, according to the former order the market value of the land in question was assessed at Rs. 200/- per sq. meter; according to the latter order the market value of the other land was assessed at Rs. 40/- per sq. meter.

Since the petitioner was aggrieved by the order dated 31-1-1978, they filed an appeal before the Appellate Authority.

Vide order dated 31-1-1981, the Appellate Authority remanded the case back to the Assessing Authority with the direction to determine the market value of the land in question after taking into consideration the sale price of the lands in the neighborhood. However, as the petitioner was still aggrieved by the said order, they preferred a revision petition before the Revisional Authority, i.e. the Rajasthan Revenue Board, Ajmer. However, eventually the case was transferred to the Divisional Commissioner, Jaipur Division and was further transferred to the Additional Divisional Commissioner. The Additional Divisional Commissioner, vide order dated 9-2-1990, partly accepted the revision petition. Since the petitioner still entertained some doubts about the real purport of the Revisional Order, they filed an application under Section 22 A of the Act of 1964. The application was disposed of by order dated 1-5-1991.

Since the State was aggrieved by the Revisional Order dated 9-2-1990 and the order dated 1-5-1991, they filed a writ petition before this court. However, with the creation of the

learned Tribunal, the writ petition was transferred to the learned Tribunal. Vide order dated 6-2-1998 (Annexure 10), the learned Tribunal set aside the orders dated 9-2-1990 and 1-5-1991 and remanded the case back to the Assessing Authority with the direction to complete the assessment while considering “the value the land would fetch, if sold in the open market on the date of commencement of the Urban Land Tax (Amendment) Act, 1973.”

Since the petitioner was aggrieved by the order dated 6-2-1998, they filed a Review Petition before the learned Tribunal. However, the same was dismissed vide order dated 18-12-1998 (Annexure 11). In pursuance of the judgment dated 6-2-1998, the Assessing Authority again reassessed the value of the land in question at Rs. 200/- per sq. mts vide Reassessment order dated 16-9-1998 (Annexure 12). Hence, this petition before this court.

Mr. A. Kasliwal, the learned counsel for the petitioner, has raised a single contention, namely that two different parcels of

land belonging to the petitioner are situated next to each other. Both the parcels of land have been assessed for the same assessment years, by two different Assessing orders. According to Section 4 of the Act of 1964 the market value of the land has to be assessed as of the specified date, i.e. 1-4-1975. Yet, while the land in question has been assessed @ Rs. 200/- per sq. mts., vide order dated 31-1-1978 and the reassessment order dated 16-9-1998, the other land has been assessed @ Rs. 40/- per sq. mts., vide Assessment order dated 28-12-1998. Since the market value of both the parcels of land has to be assessed on the basis of the specified date, i.e. 1-4-1973, the variation and the dichotomy in the assessment are inexplicable. According to Section 4 of the Act of 1964, the market value of the land is to be assessed on the basis of what it would have fetched, if sold in the open market as on the specified date. However, the variation in the market value could not be so great as the land in question and the other parcel of land are adjacent to each other. Therefore, the assessment is arbitrary, unfair and unjust.

Although Mr. B. L. Awasthi, the learned Additional Government Advocate, has supported the impugned orders, but he was unable to reveal the basis of the assessment of the market value of the two adjacent plots of land, namely the land in question and the other land.

Section 4 of the Act of 1964 lays down the principle to be applied for assessing the market value of the land and building under the Act of 1964 and based on that principle, the market value of the land needs to be assessed as on 01.04.1973. Before referring to Section 4 of the Act of 1964, it is essential to note that Section 3 of the Act of 1964 is the charging section. According to the said Section, the tax is to be levied and collect with effect on and from 1-4-1973. Section 4 of the Act of 1964 lays down the method for determining the market value of the land and building in the following words:

> **Determination of Market Value**:- For the purpose of this Act, the Market value of any land or building or both shall be estimated to be price which in the opinion of the Assessing Authority, such land or building or both would have fetched if sold in the open market on the date or the commencement of the Rajasthan Urban Land (Amendment) Act, 1973.

Thus, the date with reference to which the tax is to be levied—the specified date—has been laid down in Section 3 of the Act of 1964. Moreover, Section 4 lays down the principle for determining the market value of the land and building. According to the said Section for basis for assessing the market value of a land is the price it would have fetched if sold in the open market. The market value of a property would mean the amount that could reasonably be expected for the property if the same is sold by a willing seller to a genuine purchaser and presupposes the knowledge, situation and the circumstances of the property in question. While making such an assessment, the Assessing Authority should consider the location, the nature, the extent and the usage of the land etc. as it existed on the specified date, i.e. 1-4-1973. Since the land in question and the other land are adjacent to each other, since the nature of the land is the same—land situated in urban area, since the use of the land is the same—commercial usage, since there is not a drastic difference in the size of the lands, since the market value of the land is pegged to the specified date, it is indeed surprising that the Assessing Authority has calculated

the market value of the land in question @ Rs. 200/- per sq. mts. and the market value of the other land as merely @ Rs. 40/- per sq. mts. There is no reasoning given in the Assessment order dated 31-1-1978 for assessing the market value of the land in question @ Rs. 200/- per sq. mts. Similarly, in the Judgment dated 6-2-1998, this glaring anomaly has escaped the notice of the learned Tribunal. Although the difference in the market value as assessed by the Assessing Authority was pointed out by the petitioner in the Review proceedings, but the same was brushed aside by the learned Tribunal vide Judgment dated 18-12-1998. Even the Reassessment order dated 16-9-1998 does not give any reasoning for assessing the market value of the land in question @ Rs. 200/- per sq. mts. The learned Additional Government Advocate could not point out any reason for the unequal assessment of the market value of the land in question and the other land. Thus, the impugned orders are non-speaking orders. They also suffer from non-application of mind. Hence, the impugned orders and Judgments are unsustainable.

In the result this petition is allowed and the Assessment order dated 31-1-1978 (Annexure 5), the Judgment dated 6-2-1998 (Annexure 10), the Judgment dated 18-12-1998 (Annexure 11) and the Reassessment order dated 16-9-1998 are quashed and set aside. The case is remanded back to the Assessing Authority (Land and Building Tax), Nagar Nigam, Jaipur for reassessment, keeping in mind the Assessment order dated 28-12-1998. The Assessing Authority is directed to reassess the market value of the land in question and to pass the order of reassessment within six months of the receipt of the certified copy of this judgment.

R. S. Chauhan J. R. M. Lodha J.